Supreme Court, U.S.
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No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1994

DUCHESNE COUNTY, MERV TAYLOR,
JERRY FOOTE, and CLAIR POULSON,
Petitioners,

v.

LOUIS F. ARNOLD, Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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PETITION FOR WRIT OF CERTIORARI

JAN GRAHAM
Utah Attorney General
CAROL CLAWSON
Utah Solicitor General
BRENT A. BURNETT *
Assistant Attorney General
330 South 300 East
Salt Lake City, UT 84111
Telephone: (801) 575-1600

LYNN J. LUND
8 East 300 South, Suite 201
Salt Lake City, Utah 84111
Telephone: (801) 355-7419

*Counsel of Record

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QUESTION PRESENTED

May a state enact a limitations statute specifically applicable to section 1983 actions?

PARTIES TO THE PROCEEDING

All parties to this proceedings are listed in the caption.

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PETITION FOR WRIT OF CERTIORARI

Duchesne County, Jerry Foote, and Clair Poulson, officers of Duchesne County, and Merv Taylor, an officer of the State of Utah, petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is reported at 26 F.3d 982. A copy is attached as Appendix A. The memorandum decision and order of United States District Court Judge Dee V. Benson dismissing this action is reported at 810 F. Supp. 1239. A copy is attached as Appendix B.

JURISDICTION

The judgment petitioners seek to review was entered on May 27, 1994. This Court has jurisdiction over the petition pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The statutes involved in the instant action are 42 U.S.C. § 1988 and Utah Code Ann. § 78-12-28(3) (1992). The full text of these statutes is attached as Appendix C.

STATEMENT OF THE CASE

On April 21, 1988, respondent Louis F. Arnold was arrested and charged with selling a stolen firearm. The charges were subsequently dismissed. Arnold filed suit on April 17, 1992 against defendants Duchesne County, Sheriff Clair Poulson, Deputy Jerry Foote, and State Peace Officer Merv Taylor. Arnold asserted claims under 42 U.S.C. §§ 1983, 1985, and 1986, as well as pendant state claims.

Defendants filed a motion to dismiss Arnold's section 1983 claims as barred by the two-year statute of limitations in Utah Code Ann. § 78-12-28(3) (1992) for civil rights actions brought under section 1983. This motion was granted by District Court Judge Dee V. Benson in his Memorandum Decision and Order of January 21, 1993. *Arnold v. Duchesne County*, 810 F. Supp. 1239 (D. Utah 1993).

Arnold appealed the dismissal of his federal causes of action to the United States Court of Appeals for the

Tenth Circuit. After briefing and oral argument, the court rejected the viability of a state-created statute of limitations for civil rights actions, and held that the state legislature usurped the role of federal law when it sought to establish a specific statute of limitations for a federal cause of action. *Arnold v. Duchesne County*, 26 F.3d 982 (10th Cir. 1994).

Petitioners Duchesne County, Clair Poulson, Jerry Foote, and Merv Taylor file this petition for a writ of certiorari, urging this Court to reject the rule of law propounded by the Tenth Circuit Court of Appeals and to hold that state legislatures can establish specific statutes of limitations for actions brought under section 1983 so long as they are not inconsistent with the Constitution and laws of the United States.

REASONS FOR GRANTING THE PETITION

The court of appeals decided an important question of federal law, which has not been, but should be, settled by this Court: May a state enact a limitations statute specifically applicable to section 1983 actions? The states need to know whether it is permissible for states, whose courts have concurrent jurisdiction over section 1983 actions, to enact specific statutes of limitations for such causes of action. The Tenth Circuit Court of Appeals' decision conflicts with the implication in *Burnett v. Grattan*, 468 U.S. 42, 53 n.15 (1984), that such state statutes are permissible.

The appellate decision in this case also conflicts with those of three other circuit courts of appeals. In *Nored v. Blehm*, 743 F.2d 1386, 1387 (9th Cir. 1984), and

Kosikowski v. Bourne, 659 F.2d 105, 107 (9th Cir. 1981), the Ninth Circuit Court of Appeals adopted a specific Oregon statute of limitations for section 1983 actions after determining that to do so would be consistent with the Constitution and laws of the United States.

In *Johnson v. Davis*, 582 F.2d 1316 (4th Cir. 1978), the Fourth Circuit Court of Appeals refused to adopt a specific Virginia statute of limitations for section 1983 actions, not because the State of Virginia was in some manner prohibited from enacting such a statute, but because the particular statute in question was found to be inconsistent with the Constitution and laws of the United States. In *Hughes v. Sheriff of Fall River County Jail*, 814 F.2d 532 (8th Cir. 1987), the Eighth Circuit Court of Appeals similarly refused to adopt a specific South Dakota tolling provision for civil rights actions that the court determined was inconsistent with federal law and policy.

A STATE'S ENACTMENT OF A SPECIFIC STATUTE OF LIMITATIONS APPLICABLE TO SECTION 1983 ACTIONS PROVIDES PREDICTABILITY AND EASE OF APPLICATION AND DOES NOT USURP THE ROLE OF FEDERAL LAW

While the Civil Rights Acts are over a century old, Congress has never seen fit to provide a specific statute of limitations to govern section 1983 actions. Instead, section 1988(a) provides that

> the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such

> civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause . . . .

In *Burnett*, this Court set out the three-step procedure by which federal courts are to select the most appropriate, or analogous, state statute of limitations to borrow.

> First, courts are to look to the laws of the United States "so far as such laws are suitable to carry [the civil and criminal civil rights statutes] into effect." *Ibid.* If no suitable federal rule exists, courts undertake the second step by considering application of state "common law, as modified and changed by the constitution and statutes" of the forum State. *Ibid.* A third step asserts the predominance of the federal interest: courts are to apply state law only if it is not "inconsistent with the Constitution and laws of the United States."

468 U.S. at 47-48. Nothing in this procedure appears to preclude legislatures from making the effort to fill the void left by Congress. Indeed, the second step expressly calls upon federal courts to "consider application of state common law, **as modified and changed by the constitution and statutes of the forum State**." This Court apparently does not believe state legislatures to be incapable of filling this void:

> The step three inquiry - whether a state rule of decision is inconsistent with the Constitution or federal law - is not necessary to resolve this case, but must be made, for example, when a state legislature has enacted a statute of limitations specifically applicable to actions brought under one or all of the Reconstruction Civil Rights Act.

Burnett, 468 U.S. at 53 n.15. Concerns that a particular statute of limitations enacted by a state legislature might be inappropriate or inimical to the policies and purpose behind the federal law can be properly treated in the step three inquiry. This is what the Fourth Circuit Court of Appeals did in *Johnson v. Davis*, 582 F.2d 1316 (4th Cir. 1978) (refusing to adopt Virginia's express statute of limitations for section 1983 actions as being contrary to the Constitution and laws of the United States), and what the Eighth Circuit Court of Appeals did in *Hughes v. Sheriff of Fall River County Jail*, 814 F.2d 532 (8th Cir. 1987) (refusing to adopt South Dakota's express tolling provision for civil rights actions as being inconsistent with federal law and policy).

Similarly, in *Nored v. Blehm*, 743 F.2d 1386, 1387 (9th Cir. 1984), and *Kosikowski v. Bourne*, 659 F.2d 105, 107 (9th Cir. 1981), the court adopted Oregon's statute of limitations for section 1983 actions after determining that to do so would be consistent with the Constitution and laws of the United States. The Ninth Circuit Court of Appeals pointed out that the passage by the state legislature of a specific statute of limitations for section 1983 made it unnecessary for the federal court to resort to characterization of the cause of action to determine what

statute would be the most analogous. The federal policies and purpose behind section 1983 were protected by the separate determination as to whether the state statute in question passed the third step of the *Burnett* test.

The Tenth Circuit Court of Appeals itself, in *Mismash v. Murray City*, 730 F.2d 1366, 1367 (10th Cir. 1984), looked first to determine if Utah had a statute of limitations expressly applicable to actions for injury to the rights of another. It was only in the absence of such a statute that the court then sought to determine what other statute of limitations would be considered "most analogous." Yet, when Utah enacted an expressly applicable statute of limitations, the Tenth Circuit Court of Appeals refused to borrow it, holding that it had usurped the role of federal law.

The question of whether the states are free to enact express statutes of limitations for section 1983 actions was not addressed by this Court in either *Wilson v. Garcia*, 471 U.S. 261 (1985), or *Owens v. Okure*, 488 U.S. 235 (1989). Those cases addressed the question of which state statute of limitations was "most analogous" in the absence of a specific, applicable state statute.

In rejecting the authority of the State of Utah to establish a statute of limitations for section 1983 actions, the Tenth Circuit Court of Appeals overlooked the fact that the courts of the State of Utah have concurrent jurisdiction over section 1983 actions. On the other hand, District Judge Benson correctly pointed out that the State of Utah had a "legitimate interest in the efficient adjudication of these actions." *Arnold*, 810 F. Supp. at 1246. While the cause of action is federal in nature, the state has an interest

in establishing the procedural rules by which it may be brought in the courts of Utah where, as here, Congress has failed to create such a statute of limitations.

Far from seeking to usurp the role of either federal law or the federal courts, the legislature of the State of Utah simply sought to fill a void left in a federal cause of action. Indeed, having left this void, Congress expressly stated that it was to be filled by borrowing from state law. 42 U.S.C. § 1988(a). It is not improper for a state legislature to weigh the merits and drawbacks of the several possible statutes of limitations and make a reasoned choice of the most appropriate statute in that state for a civil rights action brought under section 1983. The Tenth Circuit Court of Appeals instead presumed that the Utah Legislature is not to be trusted and that any such choice of a statute of limitations would be an attempt to throttle and curb the federal cause of action. But if this were the case, the federal and state courts would be fully able to protect the federal cause of action, as did the Fourth Circuit Court of Appeals in *Johnson* and the Eighth Circuit Court of Appeals in *Hughes*, under the third step of the *Burnett* analysis.

Indeed, permitting the states to fill the void left by Congress also furthers the needs that this Court has noted for ease of application, predictability, and clarity as to what statute of limitations will be applied in civil rights cases. *Owens*, 488 U.S. at 240-43. A specific state statute of limitations provides an advantage to the litigants because they can readily ascertain what statute will be applied. Even after this Court's pronouncements, there can still be confusion as to which specific statute of limitations should be used. *Meade v. Grubbs*, 841 F.2d 1512 (10th Cir. 1988)

(adopting Oklahoma's statute of limitations for injury to the rights of another). By permitting states to enact specific statutes of limitations, so long as they do not conflict with federal law, all such confusion can finally be laid to rest.

There is another reason for permitting the state legislatures to enact specific statutes of limitations for civil rights actions. Under *Owens* and *Wilson*, federal courts borrow the residual personal injury statute of limitations of the state. But like anything that is borrowed, as opposed to being tailored to fit, discrepancies and hardships may arise. California has only a one-year residual personal injury statute of limitations. *McDougal v. County of Imperial*, 942 F.2d 668, 672-73 (9th Cir. 1991). Prior to *Wilson*, the Ninth Circuit Court of Appeals had adopted a three-year statute of limitations for section 1983 actions brought in California. Under *Wilson*, the court was required to borrow a one-year statute in lieu of the three-year statute previously used, notwithstanding the plaintiffs' complaint that the shorter period creates "an extremely limited and restrictive remedy to seek reproval for civil rights violations and does not further the important federal interests at stake." *McDougal*, 942 F.2d at 673.

Such inequities can be avoided by permitting the state legislatures, within the confines of the *Burnett* three-step test, to establish express statutes of limitations. Rather than being bound by a statute of limitations that may be woefully short (or barely adequate) or fortuitously long, each state could then determine what time period would best fit civil rights actions under section 1983 in that state. And if, as the Tenth Circuit Court of Appeals fears, any state legislature enacts a punitive statute of limitations, whose adoption by the federal courts would be inconsistent

with the Constitution and laws of the United States, that statute can be rejected by the courts and the next most analogous statute borrowed under *Owens*.

The Tenth Circuit Court of Appeals' approach instead requires courts to borrow a statute of limitations that is not quite appropriate, but is close to being applicable to civil rights actions (and therefore most analogous). But the court rejects any statute expressly designed for civil rights actions, even though the state has balanced the competing needs of civil rights litigants and reached a reasoned decision on what limitations period should apply. This ruling of the Tenth Circuit Court of Appeals requires ambiguity instead of permitting clarity.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JAN GRAHAM
Utah Attorney General
CAROL CLAWSON
Utah Solicitor General
BRENT A. BURNETT *
Assistant Attorney General
330 South 300 East
Salt Lake City, UT 84111
Telephone: (801) 575-1600

LYNN J. LUND
8 East 300 South, Suite 201
Salt Lake City, Utah 84111
Telephone: (801) 355-7419

*Counsel of Record

AUGUST 25, 1994

APPENDIX A

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

LOUIS F. ARNOLD,

Plaintiff-Appellant,

-vs-

DUCHESNE COUNTY, MERV TAYLOR, JERRY FOOTE, and CLAIR POULSON,

Defendants-Appellees.

No. 93-4046

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH (D.C. NO. 92-CV-238-B)

John D. Russell, Attorney at Law, Salt Lake City, Utah, for Appellant.

Brent A. Burnett, Assistant Attorney General (Jan Graham, Utah Attorney General; Lynn J. Lund and Blake Nakamura, Attorneys at Law, with him on the briefs), Salt Lake City, Utah, for Appellees.

Before ANDERSON and McWILLIAMS, Circuit Judges, and SHADUR,* District Judge.

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* The Honorable Milton I. Shadur, Senior District Judge, United States District Court for the Northern District of Illinois, sitting by designation.

ANDERSON, Circuit Judge.

This case presents a single issue: whether the appropriate statute of limitations for 42 U.S.C. S 1983 actions in Utah is two Years pursuant to Utah Code Ann. § 78-12-28(3) or four years pursuant to Utah Code Ann. § 78-12-25(3). This issue has divided federal district court judges in the district of Utah.[1] The lower court in this

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[1] *Compare Adamson v. City of Provo*, 819 F. Supp. 934 (D. Utah 1993) (Anderson, J.) (Utah's residual four-year statute of limitations applies to § 1983 actions, not § 78-12-28(3)) *and Sheets v. Lindsey*, 783 F. Supp. 577 (D. Utah 1991) (Jenkins, C.J.) (same) *with Arnold v. Duchesne County*, 810 F. Supp. 1239 (D. Utah 1993) (Benson, J.) (§ 78-12-28(3) applied to bar § 1983 action) *and Tarlip v. Buckner*, No. 92-C-621-W (D. Utah May 26, 1993) (Winder, C.J.) (adopting report and recommendation following *Arnold* and applying § 78-12-28(3)), *aff'd*, No. 93-4109, 1994 U.S. App. LEXIS 4381 (10th Cir. Mar. 9, 1994) *and Schoolcraft v. Utah*, No. 92-C-114-G (D. Utah May 24, 1993) (Greene, J.) (holding without explanation that § 78-12-28(3) barred plaintiff's § 1983 claim), *aff'd on other grounds*, No. 93-4103, 1994 U.S. App. LEXIS 2063 (10th Cir. Feb. 7, 1994) *and Thompson v. Rasmussen*, No. 91-C-1039-S (D. Utah May 5, 1993) (Sam, J.) (adopting report and recommendation following *Arnold* and applying § 78-12-28(3)).

case held that section 78-12-28(3) applies to section 1983. We hold that it does not.

BACKGROUND

Plaintiff and appellant Louis F. Arnold was arrested by officers of the Duchesne County Sheriff's Department on April 21, 1988, and charged with selling a stolen firearm. The charges were subsequently dismissed, and Arnold brought this action on April 17, 1992, against Duchesne County, Sheriff Clair Poulson and officers Merv Taylor and Jerry Foote, asserting claims under 42 U.S.C. §§ 1983, 1985, 1986, and 1988, as well as numerous state law claims. Defendants filed a motion to dismiss, arguing that Arnold's action is barred by Utah's two-year statute of limitations applicable specifically to section 1983 actions.[2] The respect to his section 1983 claim, that section 78-12-28(3)'s two-year limitations period barred the claim. Arnold appeals only that ruling.

DISCUSSION

Congress provided no specific statute of limitations for actions under the Civil Rights Acts. 42 U.S.C. § 1988 endorses for the Civil Rights Acts the "settled practice" of adopting a state limitations period when the federal statute provides no such period, provided the state limitations period is not inconsistent with federal law or policy. *Wilson v. Garcia*, 471 U.S. 261, 266-67 (1985); *see also*

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[2] Defendants also claimed that Arnold had failed to state a claim for relief under 42 U.S.C. § 1985.

Owens v. Okure, 488 U.S. 235, 239 (1989).[3] As the Supreme Court has acknowledged, section 1988 mandates a three-step procedure for selecting such a state limitations period:

> First, courts are to look to the laws of the United States "so far as such laws are suitable to carry [the civil and criminal civil rights statutes] into effect. If no suitable federal rule exists, courts undertake the second step by considering application of state "common law, as modified and changed by the constitution and statutes" of the forum state. A third step asserts the predominance of the federal interest: courts are to apply state law only if it is

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[3] Section 1988 provides in part:

> The jurisdiction [over Civil Rights Act cases] . . . shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause . . . .

42 U.S.C. § 1988 (a).

not "inconsistent with the Constitution and laws of the United States."

Burnett v. Grattan, 468 U.S. 42, 47-48 (1984) (citations omitted) (quoting 42 U.S.C. § 1988); *accord Wilson*, 471 U.S. at 267. Since section 1983 indisputably contains no statute of limitations, we must consider whether Utah's two-year statute of limitations
enacted specifically for section 1983 actions comports with the second and third steps of the *Burnett* methodology.[4]

While section 1988 directs us to borrow state limitations periods, it provides no guidance on how to select the appropriate one. Accordingly, the Supreme Court has told us to select the "most analogous" or "most appropriate" statute of limitations. *Board of Regents v. Tomanio*, 446 U.S. 478, 485 (1980); *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 462 (1975). It must,

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[4] As the Supreme Court in *Burnett* acknowledged, "the second and third steps of the § 1988 inquiry shade into each other" in many cases, because a state statute of limitations motivated by "particular state concerns [that] are inconsistent with, or of marginal relevance to, the policies informing the Civil Rights Acts" may be "inappropriate for civil rights claims." *Burnett*, 468 U.S. at 53 & n.15. However, the third step of the *Burnett* inquiry-- whether the state law is inconsistent with federal law or the Constitution--"must be made, for example, when a state legislature has enacted a statute of limitations specifically applicable to actions brought under one or all" of the Civil Rights Acts. *Id.* at 53 n.15.

of course, be "consistent with federal law and policy." *Owens*, 488 U.S. at 239.

Wilson dictates a three-part analysis to determine which state statute is most appropriate or analogous:

> We must first consider whether state law or federal law governs the characterization of a § 1983 claim for statute of limitations purposes. If federal law applies, we must next decide whether all § 1983 claims should be characterized in the same way, or whether they should be evaluated differently depending upon the varying factual circumstances and legal theories presented in each individual case. Finally, we must characterize the essence of the claim in the pending case, and decide which state statute provides the most appropriate limiting principle.

Wilson, 471 U.S. at 268.

Having answered the first question affirmatively -- "the characterization of § 1983 [is] to be measured by federal rather than state standards" -- the *Wilson* Court concluded that section 1988 directs the selection for each state of the one most appropriate statute of limitations for all S 1983 claims." *Id.* at 270, 275. Finally, the Court held that the most appropriate limitations period is the one applicable to tort actions for personal injuries: it "is supported by the nature of the § 1983 remedy, and by the federal interest in ensuring that the borrowed period of limitations not discriminate against the federal civil rights remedy." *Id.* at 276.

Wilson did not, however, completely eliminate confusion surrounding the appropriate limitations period for section 1983 actions. It failed to explain how to select a statute when a state has multiple statutes of limitations applicable to personal injury actions. The Court resolved this problem in *Owens*, in which it held that in states having multiple personal injury statutes of limitations, "courts considering § 1983 claims should borrow the general or residual statute for personal injury actions." *Owens*, 488 U.S. at 249-50. The *Owens* Court's admittedly "practical inquiry" fashioned a rule to be "applied with ease and predictability in all 50 States." *Id.* at 242-43. *Owens* therefore implicitly endorsed, for section 1983 actions in Utah, this court's earlier selection of Utah's four-year residual statute of limitations applicable to actions "for relief not otherwise provided for by law." *See Mismash v. Murray City*, 730 F.2d 1366 (10th Cir. 1984) (citing Utah Code Ann. § 78-12-25(3)), *cert. denied*, 471 U.S. 1052 (1985). Accordingly, prior to the enactment of the specific statute at issue in this case, section 1983 actions in Utah were governed by a four-year statute of limitations.

In 1987, the Utah legislature enacted section 78-12-28(3), which provides a two-year period in which to bring an action "for injury to the personal rights of another as a civil rights suit under 42 U.S.C. 1983." Utah Code Ann. § 78-12-28(3). It is the only statute in the country that provides an explicit limitations period for section 1983 actions.[5]

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[5] A few states have enacted statutes applicable to all federal actions for which there is no limitations period. *See* Colo. Rev. Stat. § 13-80-102(l)(g); Haw. Rev. Stat. § 657-11. North Carolina and North Dakota apply a specific

Assuming that section 78-12-28(3) is the "most analogous" state limitations period for a section 1983 action in Utah, we must consider whether it provides "the most

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statute of limitations to all statutory causes of action, whether state or federal, that have no limitations period. N.C. Gen. Stat. § 1-52(2); N.D. Cent. Code § 28-01-16(2). Tennessee has a statute of limitations applicable to all federal civil rights actions. Tenn. Code Ann. § 28-3-104(a)(3). The Tennessee statute has been applied by federal courts. *See e.g., Sevier v. Turner*, 742 F.2d 262, 272 (6th Cir. 1984). A federal district court has applied the Colorado statute to civil rights action. *See Merrigan v. Affiliated Bankshares, Inc.*, 775 F. Supp. 1408, 1411-12 (D. Colo. 1991), *aff'd on other grounds*, 1992 U.S. App. LEXIS 3804 (10th Cir.), *cert. denied*, 113 S. Ct. 76 (1992). However, this court has held that Colorado's residual statute of limitations applies to § 1983 actions, without considering whether § 13-80-102(i)(g) applies. *Blake v. Dickason*, 997 F.2d 749 (10th Cir. 1993); *see also Arvia v. Black*, 722 F. Supp. 644 (D. Colo. 1989). Virginia had a statute providing a one-year limitations period for § 1983 actions, which the legislature repealed after four years. The Fourth Circuit held the one-year statute inapplicable to a § 1983 action, on the ground that it "disregard[ed] the constitutional values to be protected by [§ 1983] actions" and unreasonabl[y] discriminat[ed]" against those actions. *Johnson v. Davis*, 582 F.2d 1316, 1317 (4th Cir. 1978). Oregon had a statute which specifically referred to § 1983 actions, and the Ninth Circuit held it applied to such actions. *See Nored v. Blehm*, 743 F.2d 1386 (9th Cir. 1984) (per curiam). The reference to § 1983 has since been removed from the statute. *See* Or. Rev. Stat. § 30.265(1).

appropriate limiting principle," *Wilson*, 471 U.S. at 268, and is consistent with federal law and policy.[6] *See Burnett*, 468 U.S. at 53 n.15; *cf. Felder v. Casey*, 487 U.S. 131, 138 (1988) ("[a]ny state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield.") (quoting *Free v. Bland*, 369 U.S. 663, 666 (1962)). If it fails to provide the appropriate limiting principle and if it is inconsistent with federal law and policy, it fails the second and third steps of the *Burnett*/section 1988 test, and is therefore inapplicable to section 1983 actions.

To determine whether a state provision is inconsistent with the relevant federal law -- section 1983 -- we initially review the purpose and policy behind that law. This is necessary because "[a]ny assessment of the

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[6] Supreme Court decisions have directed us to consider the "most appropriate" or "most analogous" state limitations period. Those decisions, however, never had to address the situation here -- where the state legislature had enacted a limitations period specifically for § 1983 actions. Thus, a search for the most "analogous" or "appropriate" statute was necessary. Here, by contrast, § 78-12-28(3) is arguably the most "analogous" because it specifically addresses § 1983 actions, but it may not necessarily be the most appropriate, in the sense of providing the "most appropriate limiting principle." *Wilson*, 471 U.S. at 268. As the Supreme Court has stated, "[a] state law is not 'appropriate' if it fails to take into account practicalities that are involved in litigating federal civil rights claims and policies that are analogous to the goals of the Civil Rights Acts." *Burnett*, 468 U.S. at 50.

applicability of a state law to federal civil rights litigation . . . must be made in light of the purpose and nature of the federal right." *Felder*, 487 U.S. at 139. The primary objective of the Civil Rights Acts has been stated numerous times: "to ensure that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief." *Id.* (quoting *Burnett*, 468 U.S. at 55). This "uniquely federal remedy" is to be given "a sweep as broad as its language." *Id.* (quoting *Mitchum v. Foster*, 407 U.S. 225, 239 (1972), and *United States v. Price*, 383 U.S. 787, 801 (1966)). While state courts have concurrent jurisdiction over section 1983 actions, *id.*, the section 1983 remedy is supplementary to any state remedy and "can have no precise counterpart in state law." *Wilson*, 471 U.S. at 272.

We now consider whether section 78-12-28(3) conflicts with or undermines that policy. We must first determine the section's scope and we hold that section 78-12-28(3), by its terms, specifically and exclusively targets section 1983 actions. Defendants endeavor to avoid some of the difficulties inherent in such a conclusion by arguing that the section would also apply to all other civil rights actions filed in Utah.[7] We reject those arguments that section 78-12-28(3) was intended to do anything other than apply exclusively to section 1983 actions. The language of the statute could not be clearer, and we read that clear language in its ordinary way. *See Deal v. United States*,

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[7] As the lower courts in this and in another case have acknowledged, an equal protection issue could arise if different limitations periods apply to different sections of the Federal Civil Rights Acts. *See Adamson*, 819 F. Supp. at 946 n.14; *Arnold*, 810 F. Supp. at 1245 n-7.

113 S. Ct. 1993, 1998 (1993). We are unwilling to "assume that [the legislature] chose a surprisingly indirect route to convey an important and easily expressed message" concerning the reach of the statute. *Landgraf v. USI Film Prods.*, No. 92-757, 1994 U.S. LEXIS 3292, at *31 (1994).

We now turn to whether such a statute specifically targeting section 1983 actions provides an appropriate limiting principle and is consistent with the "purpose and nature" of section 1983. We hold it is not and it therefore cannot be applied to section 1983 actions in Utah.

The characterization of the essential nature of a section 1983 action is a question of federal law. This is because its characterization for statute of limitations purposes is "derived from the elements of the cause of action" and from "Congress' purpose" in enacting it. *Wilson*, 471 U.S. at 268. "Congress surely did not intend to assign to state courts and legislatures a conclusive role in the formative function of defining and characterizing the essential elements of a federal cause of action." *Id.* at 269. The Court in *Wilson* held that, based on the "nature of the § 1983 remedy" and the historical context in which it was enacted, the Congress enacting the Civil Rights Acts in 1871 would today characterize section 1983 "as conferring a general remedy for injuries to personal rights." *Id.* at 276, 278.

Additionally, and significantly, the *Wilson* Court also held that that characterization is supported "by the federal interest in ensuring that the borrowed period of limitations not discriminate against the federal civil rights remedy." *Id.* at 276. This is so because:

> General personal injury actions, sounding in tort, constitute a major part of the total volume of civil litigation in the state courts today, and probably did so in 1871 when § 1983 was enacted. *It is most unlikely that the period of limitations applicable to such claims ever was, or ever would be, fixed in a way that would discriminate against federal claims, or be inconsistent with federal law in any respect.*

Id. at 279 (emphasis added) (footnote omitted). Thus, an important ground for the Supreme Court's conclusion that section 1983 actions are properly characterized as personal injury actions was its confidence that such a characterization would "assure that neutral rules of decision" would be available to enforce them. *Id.* at 269; *cf. Felder*, 487 U.S. at 141 (rejecting application of state notice-of-claim statute in section 1983 actions brought in state court because such a statute is not "a neutral and uniformly applicable rule of procedure" but rather burdens "only . . . those who seek redress for injuries resulting from the use or misuse of governmental authority").

By enacting a specific statute of limitations for section 1983 actions alone, the Utah legislature has both usurped the role of federal law in characterizing the essence of such actions and has eliminated the assurance that neutral rules of decision will apply to section 1983 actions in Utah.

The Utah legislature has usurped the role of federal law by substituting its own judgment about the competing policies behind the statute of limitations for section 1983 actions for the more complex federal judgment embodied in the borrowing process sanctioned by section 1988 and amplified by federal common law. Statutes of limitations

promote policies of repose. Those policies are balanced, however, against the substantive policies behind the particular cause of action involved. The borrowing of such limitations periods in section 1983 actions "serves these policies of repose." *Wilson*, 471 U.S. at 271. But by borrowing a state's limitations period, the federal statute thereby incorporates the state's "judgment on the proper balance between the policies of repose and the substantive policies of enforcement embodied in the state cause of action." *Id.* That is why it is imperative to borrow the "appropriate" limitations period applicable to an "analogous" state cause of action, and that is why the characterization of section 1983 actions is crucial -- it better ensures there will be an acceptable fit between the borrowed limitations period and the policies behind section 1983.

Section 78-12-28(3) circumvents that entire process, and merely reflects the judgment of the Utah legislature as to what the appropriate limitations period for section 1983 actions should be. That is inconsistent with the rule that federal law provides the characterization of section 1983 as a part of determining the appropriate state limitations period to borrow. This circuit has so held. *Garcia v. Wilson*, 731 F.2d 640, 649 (10th Cir. 19-84) ("[W]e are unwilling to hold that a state's articulation of the limitations period specifically applicable to section 1983 claims is determinative of the federal issue and relieves the federal courts from characterizing a civil rights claims as a matter of federal law."), *aff'd*, 471 U.S. 261 (1985). *But see Nored v. Blehm*, 743 F.2d 1386, 1387 (9th Cir. 1984) (specific statute of limitations for section 1983 actions in Oregon obviated the need to characterize such actions because "[s]uch characterization serves no purpose other

than to provide guidance in the selection of the applicable state statute) (quoting *Kosikowski v. Bourne*, 659 F.2d 105, 107 (9th Cir. 1981)).[8]

Nor is section 78-12-28(3) a neutral rule of decision. It specifically, and exclusively, applies to section 1983 actions. The two-year limitations period applies "to those who seek redress for injuries resulting from the use or misuse of governmental authority." *Felder*, 487 U.S. at 141. Civil rights actions brought in Utah under other sections of the Civil Rights Acts are arguably still covered by the residual four-year statute held applicable by *Mismash*. Others suffering personal injuries from residual categories of state law torts (the jurisprudential equals to section 1983 plaintiffs under *Owens*) similarly enjoy a four-year limitations period. Section 1983 personal injury plaintiffs (i.e., those suffering personal injuries inflicted by someone acting under color of law) *alone* have been singled out for application of a two-year limitations period.

The lower court found some support for the application of section 78-12-28(3) to Arnold's section 1983 action in the fact that Utah also provides a two-year limitations period for actions against state officers "upon a

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[8] Defendants cite *Kosikowski* in particular in support of their argument that we should accept § 78-12-28(.3) so long as there is no inconsistency with the remedial objectives of § 1983. *Kosikowski* pre-dated *Wilson* with its extensive discussion of the importance of the characterization of section 1983 claims as a matter of federal law and the importance of ensuring that neutral rules of decision apply to § 1983 actions.

liability incurred by the doing of an act in [their] official capacity, and in virtue of [their] office, or by the omission of an official duty." Utah Code Ann. § 78-12-28(l). The existence of the same limitations period for a similar state cause of action against state officials is irrelevant to our consideration of the validity of section 78-12-28(3). As the *Wilson* Court acknowledged, owe are satisfied that Congress would not have characterized § 1983 as providing a cause of action analogous to state remedies for wrongs committed by public officials." *Wilson*, 471 U.S. at 279. It is "'the purest coincidence' when state statutes . . . provide for equivalent remedies; any analogies to those causes of action are bound to be imperfect." *Id.* at 272 (quoting *Monroe v. Pape*, 365 U.S. 167, 196 n.5 (1961) (Harlan, J., concurring)); *see also Owens*, 488 U.S. at 248.

Indeed, in disallowing the borrowing of a six-month Maryland administrative limitations period for a section 1983 action, the Supreme Court in *Burnett* specifically rejected the defendants' argument that there was a compelling need to quickly resolve public employee disputes, and that similar state causes of action were also confined to a six-month period:

> That policy, keyed to a classification of plaintiffs, cannot pre-empt the broadly remedial purposes of the Civil Rights Acts, which make no distinction among persons who may look to the court to vindicate their federal constitutional rights.

Burnett, 468 U.S. at 54. Thus, it is immaterial that an arguably analogous, but not identical, state law cause of action enjoys the same limitations period. What matters is whether a neutral rule of decision, consistent with the

characterization of section 1983 actions as providing redress for personal injuries, applies to section 1983 actions brought in Utah. Section 78-12-28(3) fails to achieve that result.

The legislative history of section 78-12-28(3) also suggests that its purpose is inconsistent with the purpose of section 1983. Initially, the bill introducing section 78-12-28(3) provided a two-year limitations period for actions "for personal injury, or injury to the personal rights of another." Such a statute would arguably be an appropriate response to *Wilson* and would eliminate any confusion in Utah as to the proper limitations period for section 1983 actions. And yet it would be a "neutral rule of decision," applicable to all personal injury actions.

Prior to its enactment, however, the section was changed to specifically and exclusively apply to section 1983 actions. Section 78-12-28(3) was at least partially motivated by the "proliferation" of section 1983 lawsuits, especially in our prisons." Floor Debate, 47th Utah Leg., Gen. Sess. (Jan. 16, 1987) (statements of Sen. Lyle Hillyard) (Senate Recording No. 1, Side 1). This remark certainly suggests that the purpose of the section was simply to reduce the number of such lawsuits, a purpose which would clearly contradict section 1983's broad remedial objectives.[9] No other rationale for section 78-12-

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[9] The *Burnett* Court made it clear that such a purpose is impermissible. In that case, the defendants argued that the policy of protecting public officers "from the seemingly endless stream of unfounded, and often stale, lawsuits brought against them" justified the application of a six-month limitations period to § 1983 actions. *Burnett*, 468

28(3) was given, other than the need to provide certainty in the post-*Wilson* but pre-*Owens* time period when there was still genuine confusion as to which personal injury statute of limitations applied to section 1983 actions. Yet that permissible purpose could be achieved by means of a neutral rule of decision. It need not be achieved by a rule that *only* applies to section 1983 actions. While the legislative history behind section 78-12-28(3) is admittedly sparse, it supports our view that the policies and purpose behind the section are inconsistent with section 1983.

In sum, section 78-12-28(3) attempts to do that which it cannot -- to unilaterally declare that the statute of limitations for section 1983 actions in Utah shall be two years. While Congress permits federal courts to borrow state limitations periods, neither Congress nor the Supreme Court has authorized states to create limitations periods specifically and exclusively applicable to section 1983 actions. We accordingly REVERSE the district court decision in this case and REMAND for further proceedings.

U.S. at 54. The Court held "[tlhat policy is manifestly inconsistent with the central objective of the Reconstruction-Era civil rights statutes." *Id.* at 55.

APPENDIX B

Louis F. ARNOLD, Plaintiff,

V.

DUCHESNE COUNTY, Merv Taylor, Jerry Foote, and Clair Poulson, Defendants.

No. 92-CV-348.

United States District Court
D. Utah, D.C.

Jan. 21 1993.

John D. Russell, Salt Lake City, UT, for plaintiff.

Lynn J. Lund, John P. Soltis, Salt Lake City, UT, for defendants.

MEMORANDUM DECISION AND ORDER

BENSON, District Judge.

On October 20, 1992, the court heard oral argument on defendants' Motion to Dismiss. The defendants argued that plaintiff Arnold's claim under 42 U.S.C. section 1983 was barred by Utah's two-year-statute of limitations. Plaintiff asserted Utah's four-year statute of limitations applied and the

claim was timely. Defendants also claimed that plaintiff had failed to state a proper claim for relief under 42 U.S.C. section 1985. The court ruled in favor of defendants, dismissing all claims and agreeing that Utah's two-year statute of limitations applies to section 1983 actions.

Despite the express language of Utah's statute of limitations, which declares that all civil rights actions brought pursuant to 42 U.S.C. section 1983 are subject to a two-year limitations period, two recent opinions from this district court have nonetheless held that Utah's two-year statute of limitations is not applicable to section 1983 actions in federal court. In *Sheets v. Lindsey,* 783 F.Supp. 577 (D. Utah 1991), Chief Judge Jenkins held that the four-year residual statute of limitations for personal injury claims applies in federal actions in Utah brought under 42 U.S.C. - -section 1983. Shortly thereafter, Judge Anderson of this district followed the *Sheets* holding, applying the four-year residual statute to section 1983 actions. *Worden v. Provo City,* Case No. 91-C-1202A (Unpublished decision, April, 1992).

I respectfully disagree with my two colleagues. It is the opinion of this court that the two-year statute of limitations specifically enacted by the Utah Legislature to govern civil rights actions under 42 U.S.C. section 1983 is applicable to such actions brought in federal court. For the reasons set forth below, the court issues this Memorandum Decision and Order.

1. Facts

On April 10, 1988, officers of the Duchesne County Sheriffs Office arrested plaintiff Arnold and charged him with selling a stolen firearm. The complaint against the plaintiff

was dismissed by the Duchesne County Attorney's Office on June 27, 1988. On April 17, 1992, plaintiff brought this action against Duchesne County, Sheriff Clair Poulson, and officers Merv Taylor and Jerry Foote, asserting claims under 42 U.S.C. sections 1983, 1985, 1986 and 1998. In addition, plaintiff alleged various state-law claims, including libel, slander, invasion of privacy, and intentional infliction of emotional distress. In making these claims, plaintiff asserted that his arrest had been politically motivated and that the police had actual knowledge at the time of his arrest that the firearm in question was not stolen.

Defendants asserted that plaintiff's cause of action under section 1983 was barred by Section 78-12-28(3) of the Utah Code which specifically imposes a two-year statute of limitations upon claims brought under 42 U.S.C. section 1983. Plaintiff asserted that a four-year statute of limitations applied.

II. Background

When enacting the Reconstruction Civil Rights Acts, Congress did not include specific statutes of limitations governing actions brought under 42 U.S.C. sections 1983 and 1985. Section 1988 of the Acts, however, implicitly endorsed the adoption of state limitations statutes as long as those statutes were not inconsistent with federal law or policy. *Wilson v. Garcia,* 471 U.S. 261, 267, 105 S.Ct. 1938, 1942, 85 L.Ed 2d 254 (1985); *see* 42 U.S.C. § 1988.[1] Because the

[1] Title 42 U.S.C. § 1988 provides, in, relevant part:

separate states had no specific statute of limitations which applied to civil rights actions, the issue then arose as to which particular state statute of limitations should apply to civil rights actions. Arguably, each section 1983 claim, depending on its facts, could be analogized to more than one common-law cause of action.

The United States Supreme Court attempted to resolve this issue in *Wilson v. Garcia*, 471 U.S. 261, 276-80, 105 S.Ct 1938, 1947-49, 85 L.Ed.2d 254 (1985). The Court examined three New Mexico state limitations periods which

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> The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this title, and of title 'CIVIL RIGHTS,' and of title 'CRIMES,' for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause.

could be applicable to federal civil rights actions: 1) a two--year period under the state's Tort Claims Act for actions against the state and its employees; 2) a three-year period applicable to injuries to the person or reputation of any persons; and 3) a four-year limitation period for all other actions. The United States Court of Appeals for the Tenth Circuit had concluded that the three-year statute applicable to personal injury actions was the most appropriate choice because a section 1983 claim was considered by the court to be "'an action for injury to personal rights."' 471 U.S. at 265, 105 S.Ct. at 1941 (citing 731 F.2d 640 (10th Cir.1984)).

In its review of the issue, the Supreme Court stated that section 1988 directs courts to follow a three-step process in determining the most appropriate statute of limitations. 471 U.S. at 267, 105 S.Ct. at 1942. First, a court is to look to the laws of the United States for guidance. *Id.* Because there was no statute of limitations provided by Congress for section 1983 actions, it was necessary for the *Wilson* Court to move to step two. Step two requires a court to look to state "'common law as modified and changed by the constitution and statutes" of the forum state. *Id.* at 268, 105 S.Ct. at 1942. Finding no specific state statute of limitations, the Wilson Court found it appropriate to look to the "most appropriate" or "most analogous" statute. *Id.* After analyzing the various possibilities,[2] the Court agreed with the Tenth

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[2] The Court stated that three questions must be answered in determining the "most appropriate" or "most analogous" statute of limitations. *Wilson*, 471 U.S. at 268, 105 S.Ct. at 1942. Those questions are: 1) whether state or federal law governs the characterization of a section 1983 claims; 2) whether all section 1983 claims should be characterized in the same way; and 3) which state statute

Circuit and concluded that the "tort action for the recovery of damages for personal injuries is the best alternative available." *Id.* at 276, 105 S.Ct. at 1947. After making this determination, the Court moved to step three, analyzing whether the statute of limitations violated federal law or policy. *Id.* at 276-79, 105 S.Ct. at 1947.

Despite the *Wilson* Court's intention of clarifying the law, the decision led to confusion and inconsistency in the lower courts. This was due to the fact that many states, unlike New Mexico, had multiple limitations periods for personal injury actions. As a result, courts were uncertain as to which particular personal injury limitations period should apply. In response to this confusion, the Supreme Court clarified its position four years later in *Owens v. Okure*, 488 U.S. 235, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989). There, the Court held that when a state has more than one statute directed at personal injury actions, the general or residual personal injury statute should be used for civil rights actions. 488 U.S. at 249-50, 109 S.Ct. at 581-82. The Court noted that using the residual statute would allow parties to "readily ascertain with little risk of confusion or unpredictability, the applicable limitations period in advance of filing a § 1983 action." *Id.* at 248, 109 S.Ct. at 580.

At the time of the Tenth Circuit's original ruling in *Wilson v. Garcia,* the Utah State Legislature had enacted several statutes of limitations governing personal injury actions. In *Mismash v. Murray City,* 730 P.2d 1366, 1367 (10th Cir.1994), decided the same day as *Wilson,* the Tenth Circuit noted that Utah had no statute of limitations which was "expressly applicable to actions for injury to the rights of

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provides the most appropriate limiting principle. *Id.*

another." *See, e.g.*, Utah Code Ann. § 78-12-28(2) (1992) (two-year limit for death caused by wrongful act or neglect); *Id.* § 78-12-29(4) (one-year limit for libel, slander, assault, battery, false imprisonment or seduction). Consequently, the Tenth Circuit looked at other limitations periods, noting that the residual four-year statute applied to all other personal torts not specifically enumerated. *Mismash*, 730 F.2d at 1367 (citing *Matheson v. Pearson*, 619 P.2d 321 (Utah 1980)). The Tenth Circuit then concluded "that all section 1983 claims brought in federal court in Utah are subject to the four-year limitations period." *Id.*

The Utah Supreme Court followed the Tenth Circuit's holding and applied the four-year residual statute in *Maddocks v. Salt Lake City, Corp.*, 740 P.2d 1337, 1339 (Utah 1987). With the *Maddocks* ruling there appeared to be no doubt that any section 1983 claim brought in Utah, whether in federal or state court, would be subject to a four-year statute of limitations. In 1987, however, the Utah Legislature enacted a two-year statute of limitations which specifically addressed civil rights claims under section 1983, as-follows:

> Within two years, an action:
>
> . . . . .
>
> (3) for injury to the personal rights of another as a civil rights suit under 42 U.S.C. 1983.

Utah Code Ann. § 78-12-28(3) (1992).[3]

The issue before the court is whether this statute of limitations, passed by the Utah Legislature after *Wilson, Mismash* and *Maddocks* decisions, supersedes the four-year residual limitations period. The court concludes that it does.

III. *Discussion*

When Congress passed the Civil Rights Acts, it intentionally deferred certain matters such as time limitations to the states. *See* 42 U.S.C. § 1988. As long as these limitations are consistent with federal law and policy, a state's choice should be respected by the federal courts. *Wilson,* 471 U.S. 261, 266, 105 S.Ct. 1938, 1941, 85 L.Ed.2d 254 (1985); *Robertson v. Wegmann*, 436 U.S. 584, 593, 98 S.Ct. 1991, 1996, 56 L.Ed.2d 554 (1978). If, however, the time period provided is too short to provide adequate due process or if the state has improperly discriminated against a federal cause of action, the limitations period should be rejected.

In Utah, the legislature has clearly set a two-year statute of limitations for civil rights actions under 42 U.S.C. section

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[3] *In Maddocks v. Salt Lake City Corp.*, 740 P.2d 1337 (Utah 1987), the Utah Supreme Court noted that the Utah Legislature made this change in the statute of limitations effective April 27, 1987. The change, however, occurred after the *Maddocks* case, and therefore, did not apply to the decision. Noting the change in the limitations period with the new statute, the Utah Supreme Court stated it would "leave the validity of that [two-year] restriction for later adjudication." 740 P.2d at 1339 n. 1.

1983. The legislature has also set a four-year limit for "[a]n action for relief not otherwise provided for by law." *Id.* § 78-12-25. Because Utah law provides for several different statutes of limitations for personal injury actions, the four-year statute has been deemed to be the residual or general personal injury limit. If the two-year specific limitations period had not been enacted, it is clear that the residual four-year statute would be applied to section 1993 actions. *See Owens v. Okure*, 488 U.S. 235, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989); *Mismash v. Murray City,* 730 F.2d 1366 (10th Cir.1984).

In choosing the statute of limitations applicable to a section 1983 action, the United States Supreme Court stated that courts should look to the "most appropriate" or "most analogous" state statute of limitations. *Wilson v. Garcia*, 471 U.S. 261, 268, 105 S.Ct. 1938, 1942, 85 L.Ed.2d 254 (1985). In making this determination, it is logical. to assume that the Supreme Court used the terminology of most appropriate or analogous because there was no express statute of limitations at issue in either *Wilson v. Garcia*, 471 U.S. 261, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985), or *Owens v. Okure*, 488 U.S. 235, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989). Neither case addressed the possibility of a limitations period expressly applicable to section 1983 claims, and with no express statute, the Court was forced to decide which statute of limitations was "most appropriate." In the instant case, however, Utah law provides a limitations period which expressly addresses section 1983 cases. Utah's two-year statute of limitations is obviously the "most analogous" to section 1983 actions.[4]

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[4] Even if the court were to use the analysis adopted by the United States Supreme Court in *Wilson* for determining the "most analogous" limitations period, it still finds the two-

year period most appropriate. In *Wilson,* the Supreme Court asked three questions in determining which statute of limitations was most analogous: 1) whether state or federal law governs the characterization of a Section 1983 claim; 2) if federal law applies, whether all section 1983 claims should be characterized in the same way or whether they should be evaluated differently depending upon the varying facts and legal theories presented in each case, and 3) which state statute provides the most appropriate limiting principle. *Wilson,* 471 U.S. at 268, 105 S.Ct. at 1942. The Court concluded that federal law governs the characterization of section 1983 claims, *Id.* at 271, 105 S.Ct. at 1944, that Congress favored a simple approach of applying only one statute of limitations for all section 1983 claims, *Id.* at 275, 105 S.Ct. at 1946, and that if Congress had focused on the issue, "it would have characterized section 1983 as conferring a general remedy for injuries to personal rights." *Id.* at 278, 105 S.Ct. at 1948. The Court then held that section 1983 claims were "best characterized as personal injury actions." *Id.* at 280, 105 S.Ct. at 1949.

In *Meade v. Grubbs*, 841 F.2d 1512, 1523 (10th Cir. 1988), the Tenth Circuit looked at the Supreme Court's analysis in *Wilson* and concluded that the Court intended to view "personal injury actions" synonymously with "injuries to personal rights." As a result, the Tenth Circuit held that Oklahoma's two-year statute of Limitations for "injury to the rights of another" was applicable to section 1983 claims. 841 F.2d at 1524. The Tenth Circuit noted that this statute was "the only provision in Oklahoma which [was] sufficiently broad to encompass both unintentional and intentional infliction of personal injury." *Id.* The United States Supreme Court cited the Tenth Circuit's holding with approval in

In finding to the contrary, the district court in *Sheets v. Lindsey*, 783 F.Supp. 577, 581 (D.Utah 1991), applied Utah's fouryear residual statute in a section 1983 claim, holding that it was the most applicable limitations period. The court's choice was based on its belief that Utah's two-year statute of limitations directed at civil rights actions was inconsistent with federal law and policy. 783 F.Supp. at 581. The court, relying on the principle of federalism, stated:

> A state is within its sphere of power in our federal system of government, as a matter of state policy, when it limits the time within which a state cause of action may be vindicated in state court. In contrast, a federally recognized or federally created cause of action cannot be foreshortened by specific state legislation.
> The concept is simple. The issue before the court concerns the fundamental principle of federalism;

Owens v. Okure, 488 US. 235, 242, 109 S.Ct. 573, 577, 102 L.Ed.2d 594 (1989), stating that the *Meade* decision was based on a correct observation "that § 1983 embraces a broad array of actions for injury to personal rights and that the intentional tort is therefore too narrow an analogy to a § 1983 claim."

Following the reasoning of both the *Meade* and *Owens* decisions, the court finds that in the instant case, Utah's two-year statute of limitations is "most analogous" to the civil rights cause of action. Guided by the three questions posed in *Owens,* the court believes that Utah's two-year statute of limitations does not alter the federal characterization of section 1983 and at the same time offers a single limitations period which is clear and express.

> namely the geographic division of power. A state lacks the power to truncate federally created or federally recognized rights. The principle of federalism is the perennial message of both the Constitution and the Civil Rights Act. Whether to diminish a federally created right is simply not a choice for a state to make. By passing [this legislation], the State of Utah seeks to make a choice that is clearly outside the realm of their Constitutionally created powers.

Sheets, 783 F.Supp. at 581.

The *Sheets* court concluded that simply because the Utah legislature chose to enact a specific two-year statute of limitations, section 1983 actions in Utah were thereby "foreshortened," "truncated" and "diminished." These assumptions are not warranted. Only if the two-year statute is found to be "inconsistent with federal laws and policy" is it subject to attack.

In essence, the *Sheets* opinion concludes that federal law and policy were violated because the Utah Legislature enacted a statute of limitations specifically directed to a federal cause of action. In addressing that premise, several questions arise. First, is a statute of limitations a federally-created right? If not, how should a statute of limitations be evaluated to determine its legality or constitutionality? Second, is a state within its proper sphere of power in setting a specific statute of limitations for section 1983 claims when Congress has deferred to the states in this area and the states have a legitimate interest in these actions by virtue of their concurrent jurisdiction? Finally, are the states prohibited from shortening their residual statutes of limitations for personal injury claims

because such an action could be deemed to have "truncated" the right of a party to bring a section 1983 action?

In addressing each of these questions in turn, the court finds that the statute of limitations at issue here is not a federally-created right.[5] To qualify as a substantive limit, the statute of limitations must be contained within the same statute or act which created the cause of action, making the limitations period integral to the right. *Sarfati v. Wood Holly Assocs.*, 874 F.2d 1523, 1526 (11th Cir.1989) (citing *United States ex rel. Texas Portland Cement Co. v. McCord*, 233 U.S. 157, 162, 34 S.Ct. 550, 552, 58 L.Ed. 893 (1914)). If not part of the same act, however, the "limitations period is said to be only a procedural limit on the remedy, and not a substantive limit on the right." *Id.* Because the Civil Rights Acts did not provide for a specific statute of limitations, the state limitations periods should be considered procedural in nature.

If the limitations period is procedural in nature, procedural due process must be met for the time period to pass constitutional muster. It is therefore necessary that a statute of limitations provide a reasonable time in which a plaintiff may bring suit. *Owens v. Okure*, 488 U.S. 235, 251 n. 13, 109 S.Ct. 573, 582 n. 13, 102 L.Ed.2d 594 (1989) (citing *Burnett v. Grattan*, 468 U.S. 42, 61, 104 S.Ct. 2924,

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[5] Technically, section 1983 is not a federally-created right but rather a federally-created remedy. In examining whether the remedy provided by section 1983 has been "truncated" in some manner, the cause of action should be the focus. The court believes that the remedy would be "truncated" if, for example, the state of Utah passed a law attempting to limit the substance of the cause of action in some manner.

2935, 82 L.Ed.2d 36 (1984) (Rehnquist, J., dissenting)). For the time provided to be "reasonable," it must be consistent with the policies behind the Civil Rights Acts which include compensating those persons whose civil rights have been violated and preventing abuses of power by persons acting under color of state law. *Burnett v. Grattan*, 468 U.S. 42, 53, 104 S.Ct. 2924, 2931, 82 L.Ed.2d 36 (1984).

In *Burnett*, the Supreme Court noted that unreasonable time limits for section 1983 actions may occur because state legislatures are influenced by the "importance of underlying state claims, the need for repose for potential defendants, considerations of judicial or administrative economy, and the relationship to other state policy goals." 468 U.S. at 53, 104 S.Ct. at 2931. In the *Burnett* case, for example, the Court found that a six-month administrative statute of limitations was inappropriate for a federal civil rights action. *Id.* at 55, 104 S.Ct. at 2932. The critical factor in the decision was the time period in which a plaintiff was required to file a cause of action. The Court concluded that six months, although sufficient for an administrative claim, simply did not afford a plaintiff the proper time to prepare a civil rights complaint. *Id.* at 50-51, 104 S.Ct. at 2929-30. Furthermore, the Court found that the goal of the state administrative procedure, including the short limitations period, was to promptly identify and resolve employment disputes, thereby encouraging conciliation and private settlement. *Id.* at 54, 104 S.Ct. at 2931. These goals, however, were "inconsistent with the central objective of the Reconstruction-Era civil rights statutes" of ensuring that individuals whose federal constitutional or statutory rights had been abridged could recover damages or obtain injunctive relief. *Id.* at 55, 104 S.Ct. at 2932.

In the instant case, there is no evidence that two years is an unreasonable length of time for an individual to bring an action under section 1983. In fact, at the time of the *Owens v. Okure* decision, which designated residual personal injury periods as most appropriate, several states had residual personal injury statutes of limitations of two years or less. *See Owens,* 488 U.S. at 244-248, n. 8-10, 109 S.Ct. at 578-80, n. 8-10 (Alabama, Arizona, Georgia, Kansas, Texas providing two years residual personal injury statutes; Virginia providing one year). Furthermore, the First Circuit applied a one-year statute of limitations for section 1983 actions brought in Puerto Rico in *Ayala Serrano v. Lebron Gonzalez*, 909 F.2d 8, 12 (1st Cir. 1990), and the Ninth Circuit approved the application of California's one-year residual statute of limitations to section 1983 claims in *Del Percio V. Thornsley,* 877 F.2d 785, 786 (9th Cir.1989). *See also McDougal v. County of Imperial*, 942 F.2d 668, 673 (9th Cir.1991) (applying one-year residual statute to section 1985 claims).[6] In light of these cases and because there is no evidence to indicate that two years is an unreasonable time period for a plaintiff to bring a section 1983 action, the court finds that Utah's two-year limitations period does not violate procedural due process.

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[6]Interestingly, prior to the United States Supreme Court's decision in *Wilson v. Garcia,* 471 U.S. 261, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1984), the Ninth Circuit had applied a three-year statute of limitations to section 1983 actions filed in federal courts in California. *McDougal v. County of Imperial,* 942 F.2d 668, 672 (9th Cir.1991). The impact of the *Wilson* decision in California was to shorten the limitations period by two years. *Id.*

It is also necessary for the court to address the issue of equal protection in assessing the validity of Utah's two-year limitations period.[7] If it can be shown that the Utah

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[7]In the instant case, plaintiff failed to show any class-based or racial animus to support a claim under 42 U.S.C. section 1985. As a result, the court will not decide in this opinion whether Utah's two-year statute of limitations is applicable to section 1985 cases. The language of the statute appears ambiguous in that regard, stating that the time period applies to any action "for injury to the personal rights of another as a civil rights suit under 42 U.S.C. 1983." Utah Code Ann. § 78-12-28(3) (1992). One possible interpretation of that language is that a section 1983 action is merely an example of an injury to the personal rights of another. Another interpretation is that the statute applies only to section 1983 actions. If the latter interpretation is applied, section 1985 actions could be subject to the four-year residual statute. The issue of equal protection could then arise as these two civil rights actions would be subject to different limitations periods. Even if this were the case, the court finds that the two statutes are distinguishable and any difference in limitations periods would be rationally based. First, section 1983 actions are the most prevalent of the two and it is reasonable that the Utah Legislature addressed only section 1983 claims. Second, section 1985 deals with conspiracies and class-based or racial animus. It is rational that the legislature could find that this particular cause of action would take more time to develop than the simpler 1983 action.

Although not necessary to this decision, the court believes that the same statute of limitations should apply to section 1985 claims as section 1983 claims as both actions involve

Legislature improperly discriminated against the federal cause of action in passing the two-year time period, it may be proper for the court to apply a more appropriate statute of limitations. In assessing the law, however, the court finds no evidence to support the contention that the Utah Legislature improperly discriminated against a federal claim.

In addition to, and consistent with, the two-year statute of limitations for section 1983 claims, Utah law provides a two-year time limit on actions brought against state officers "upon a liability incurred by the doing of an act in [their] official capacity, and in virtue of [their] office, or by the omission of any official duty." Utah Code Ann. § 78-12-28(l) (1992). The selection of the same statute of limitations for an action against state officers and for section 1983 claims indicates to the court that the legislature reasonably assessed the length of time required to bring a cause of action against any individual acting under color of state law. Certainly if the Utah Legislature had intended that the two-year time period apply *only* to section 1983 claims brought in federal court while providing a greater time period for a civil rights action in state court, it could be argued that the legislature had improperly discriminated against the federal cause of action. But that is not the case here. In fact, Utah law provides that a notice of claim against the state or an employee must be filed with the state attorney general within one year after the claim arises. Utah Code Ann. § 63-30-12 (1989).[8]

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injury to the personal rights of another. See *McDougal v. County of Imperial,* 942 F.2d 668, 673 (9th Cir.1991).

[8]The notice of claim requirement gives the affected government entity an opportunity to promptly investigate and remedy defects, avoid unnecessary litigation, minimize

It may also be argued that a state legislature could be motivated by the desire to limit *any* liability on the part of state officers, either in state or federal court. For example, in *Sheets v. Lindsey,* the court was troubled by the possibility of such an "improper motive" by the legislature.

> The court is troubled by a state law enacted for the sole purpose of limiting the time period in which a § 1983 claim may be brought. Such a statute may well be motivated by a legislative desire to limit the liability of persons acting under color of state law. In contrast, the court believes that the enactment of a state general or residual statute of limitations is not likely to be motivated by a legislative desire to limit the liability of its officers or employees.

783 F.Supp. 577, 582, n. 10 (D.Utah 1991).

In this court's opinion, it is equally reasonable to believe that the Utah Legislature's adoption of the two-year limitations period was based upon a desire to establish an express statute of limitations within the parameters set by the Tenth Circuit in *Mismash v. Murray City,* 730 F.2d 1366 (10th Cir. 1984). The *Mismash* court had concluded that "all section 1983 claims should be characterized as actions for injury to the rights of another." *Id.* at 1367. In selecting the

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difficulties which could arise upon changes in administrative personnel, and make necessary budget adjustments. Its imposition, therefore, as to governmental entities but not to other tortfeasors does not constitute a denial of equal protection. *Sears v. Southworth,* 563 P.2d 192 (Utah 1977).

four-year residual statute as the most analogous limitations period, the Tenth Circuit noted that its selection was due to the fact that Utah had no statute of limitations "expressly applicable to actions for injury to the rights of another." *Id.* Due to the similarity in language between the *Mismash* decision and the Utah statute, it is reasonable to believe that the Utah Legislature was attempting to satisfy the Tenth Circuit's concerns when it enacted the specific limitations period. Furthermore, as discussed earlier, the court believes that the legislature was using its best judgment in preferring a two-year time limit over other possible limitation periods.

The court recognizes that the Utah Legislature was also motivated by state interests in setting the statute of limitations at two years. However, the court finds that Utah's interests in these issues are legitimate and certainly do not amount to an invasion of the federal domain. Utah courts have concurrent jurisdiction over section 1983 claim,[9] and therefore, the state has a legitimate interest in the efficient adjudication of these actions.[10] And, it is again important to

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[9] *Kish v. Wright*, 562 P.2d 625, 627 (1977).

[10] The state also offers a potentially more favorable forum to civil rights plaintiffs. In state civil cases, juries consist of eight members, although the parties may stipulate to fewer. Utah Code Ann. § 78-46-5(2) (1992). Furthermore, the Utah Constitution provides that three-fourths of the jury may return a verdict. Utah Const. Art. I § 10. In contrast, federal court in the District of Utah currently provides a jury of twelve members and requires a unanimous verdict. *See* Utah District Court Rule 113(a)(1).

note that by the language of section 1988, Congress specifically allowed state law to govern certain aspects of the Civil Rights Acts, including statutes of limitations. Congress has the power at any time to set specific limitations periods for any civil rights action. It may impose one year, two years, four years, or ten years, and such Congressional action would render any state statute of limitations moot as applied to section 1983 claims. However, as long as Congress chooses to defer to the states in questions of time limitations, the court cannot see that a state is violating the principles of federalism by setting an express statute of limitations for civil rights actions, particularly when the state has concurrent jurisdiction.[11]

In addition, the court does not believe that state courts are a less favorable forum for section 1983 claims merely because the defendants in those actions are often state officers. Although the federal forum was certainly preferable at the time of the enactment of the Civil Rights Acts in 1871, the court believes that present-day members of the Utah state judiciary have shown that they are equally interested in proper vindication of federal civil rights claims.

[11] As discussed earlier, the limitations period must meet due process and equal protection considerations. If either were violated, the statute of limitations would not be applied. Such a result, however, would be due to the state's violation of the due process or equal protection clauses, not because the state improperly intruded into the federal domain.

The *Sheets* decision implies that any state which shortens its statute of limitations governing civil rights claims may run afoul of federal law. In choosing the four-year time period as the "most analogous," the *Sheets* court asserted that a state is less likely to alter its residual statute governing various personal injury actions for the purpose of discriminating against a federal claim. 783 F.Supp. at 582 n. 10. However, the mere fact that legislative discrimination is "less likely" does not mean there has been an elimination of the possibility of states acting in such a discriminatory manner. If a state legislature were to shorten a residual statute of limitations, the *Sheets* opinion indicates that a federal court should assume that the motive was to "truncate" the federal cause of action. But in attempting to guess the motives of a state legislature, federal courts would be undertaking a task too difficult and too imprecise to be of value in this circumstance.[12] Federal courts should be concerned with making sure that statutes of limitations meet due process and equal protection standards. If these requirements are met, and as long as the federal Congress has intentionally left the matter to the discretion of the various states, the state statute of limitations for section 1983 actions should be honored by the federal courts.

Conclusion

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[12] The court recognizes that a legislature's motive for passing a particular statute can, in certain circumstances, be the basis for a judicial determination that the statute is invalid. *See Wallace v. Jaffree*, 472 U.S. 38, 55-60, 105 S.Ct. 2479, 2488-92, 86 L.Ed.2d 29 (1985). Such a concern, however, is not applicable to the instant case as there is no evidence whatsoever that the Utah Legislature's purpose was to obstruct or eliminate the right to bring a section 1983 claim.

The Utah Legislature has acted within its authority in setting the statute of limitations for section 1983 actions at two years. The statute is broad enough to encompass claims based on various factual scenarios arising out of section 1983, and does not violate a plaintiff's right to due process or equal protection. As long as the Congress of the United States continues to defer to the states on statutes of limitations for civil rights claims, it is within a state legislature's prerogative to set express time periods for such actions.

It is hereby ordered that plaintiff's cause of action under 42 U.S.C. section 1983 is barred by the two-year statute of limitations. Defendants' motion to dismiss is **GRANTED**.

IT IS SO ORDERED.

APPENDIX C

42 U.S.C. § 1988 (1991)

§ 1988. Proceedings i vindication of civil rights; attorney's fees; expert fees

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adopted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action of proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fees.

UTAH CODE ANN. § 78-12-28 (1992)

§ 78-12-28. Within two years.

Within two years, an action:

(1) against a marshal, sheriff, constable, or other officer upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution; but this section does not apply to an action for an escape;

(2) for recovery damages for the death of one caused by the wrongful act or neglect of another; or

(3) for injury to the personal rights of another as a civil rights suit under 42 U.S.C. 1983.